

APPEAL NO. 032944
FILED DECEMBER 29, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on October 9, 2003. The hearing officer determined that: (1) the claimed injury occurred while the appellant (claimant) was in a state of intoxication as defined in Section 401.013 from the introduction of a controlled substance, thereby relieving the respondent (carrier) of liability for compensation; and (2) because the carrier is relieved from liability for compensation, the claimant did not have disability. The claimant appeals these determinations on sufficiency of the evidence grounds. The claimant also asserts that the hearing officer erred by failing to add the issue of carrier waiver. The carrier urges affirmance.

DECISION

Affirmed.

We first address the claimant's assertion that the hearing officer erred by failing to add the issue of carrier waiver. The claimant asserted that the issue had been discussed at the benefit review conference (BRC) but was not included in the BRC report. Applying Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.7 (Rule 142.7), the hearing officer found that the claimant did not timely request addition of the issue and denied the claimant's request. We cannot conclude that the hearing officer abused her discretion in denying the motion to add the issue. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986).

The hearing officer did not err in making the complained-of determinations. The intoxication determination involved a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's intoxication determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Because the claimant did not sustain a compensable injury, the hearing officer properly concluded that the claimant did not have disability. Section 401.011(16).

The decision and order of the hearing officer is affirmed.

The true corporate name of the insurance carrier is **TRANSPORTATION INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Edward Vilano
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Gary L. Kilgore
Appeals Judge